

## **ORDINANCE NO. 96-24**

AN ORDINANCE PERTAINING TO THE SETTING OF RESTRICTIONS ON THE SALE, DISTRIBUTION AND POSSESSION OF CIGARETTES AND TOBACCO PRODUCTS TO OR BY MINORS, AMENDING THE CODE OF THE CITY OF EMPORIA, KANSAS, 1983, AS AMENDED BY AMENDING SECTION 16-99 AND ADDING SECTION 16-99.1 TO SAID CODE; AND REPEALING SECTION 16-99 OF THE CODE OF THE CITY OF EMPORIA, KANSAS, 1983 AS IT EXISTD PRIOR TO THE ADOPTION OF THIS ORDINANCE.

BE IT ORDAINED by the Governing Body of the City of Emporia, Kansas:

SECTION 1. That section 16-99 of the Code of the City of Emporia, Kansas is hereby amended to read as follows:

### **Section 16-99. Restrictions on the Sale, Distribution and Possession of Cigarettes and Tobacco Products.**

- (1) Definitions: When used in this Section, unless the context clearly indicates otherwise, the following terms shall have the meanings respectively ascribed to them:
  - a. Cigarettes: Any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.
  - b. Person: Any individual, society, association, partnership, joint-stock company, joint adventure, corporation, estate, trustee, agency, assignee, referee, receiver, or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise and any combination of individuals.
  - c. Sale or Sell: Any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration.
  - d. Tobacco Products: Cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour, Cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing of smoking in a pipe or otherwise, or both for chewing and smoking.
  - e. Retail Dealer: Means a person other than a vending machine operator in possession of cigarettes for the purpose of sale to a consumer.
- (2) Prohibited Acts: It shall be unlawful for any person:
  - a. To sell, furnish or distribute cigarettes, cigarette papers or tobacco products to any person under 18 years of age.

- b. Who is under 18 years of age to purchase or attempt to purchase cigarettes or tobacco products.
- c. Who is under 18 years of age to possess or attempt to possess cigarettes or tobacco products.
- d. Who is a retail dealer to fail to post and maintain in a conspicuous place in the dealer's establishment the following notice: "By law, cigarettes and tobacco products may be sold only to persons 18 years of age and older."
- e. To distribute samples within 50 feet of any school when such facility is being used primarily by persons under 18 years of age unless the sampling is: (1) In an area to which persons under 18 years of age are denied access; (2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or (3) at or adjacent to an outdoor production, repair or construction site or facility.
- f. To sell cigarettes or tobacco products by means of a vending machine in any establishment, or portion of an establishment, which is open to minors, except that this subsection shall not apply to:
  - i. The installation and use by the proprietor of the establishment, or by the proprietor's agents or employees, of vending machines behind a counter, or in some place in such establishment, or portion thereof, to which minors are prohibited by law from having access;
  - ii. The installation and use of a vending machine in a commercial building or industrial plant, or portions thereof, where the public is not customarily admitted and where machines are intended for the sole use of adult employees in the building or plant; or
  - iii. A vending machine which has a lock-out device which is inoperable in the continuous standby mode and which requires manual activation by the person supervising the operation of the machine each time cigarettes or tobacco products are purchased from the machine.

**(3) Penalties and Defenses.**

- a. Any person who violates any of the provisions of this section, except as otherwise provided in this section, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both.
- b. (1) It is a Class B person misdemeanor punishable by a minimum fine of \$200 and a maximum penalty as provided by subparagraph (a) for any person, directly or indirectly, to: (A) Sell, give or furnish any cigarettes or tobacco products to any person under 18 years of age; or (B) buy any cigarettes or tobacco products for any person under 18 years of age. (In determining the penalty to be imposed for a violation of this subsection by a licensed retail dealer whose employee sold,

furnished or distributed the cigarettes or tobacco products, the court shall consider it to be a mitigating circumstance if the employee had completed a training program, approved by the secretary of revenue or the secretary's designee, in avoiding sale, furnishing or distributing of cigarettes or tobacco products to persons under 18 years of age.)

- c. (2) It shall be a defense to a prosecution under this subsection if: (A) The defendant is a licensed retail dealer or a person authorized by law to distribute samples; (B) the defendant sold, furnished or distributed the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; and (C) to purchase or receive the cigarettes or tobacco products, the person under 18 years of age exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes or tobacco products.
- d. Violation of subsection (b) or (c) of paragraph two of this section and amendments thereto is a cigarette or tobacco infraction for which the fine is \$25.
- e. Any agent, employees or others who aid, abet or otherwise participate in any way in the violation of this section or in any of the offenses hereunder punishable shall be guilty and punished as principals to the same extent as any person violation this act.
- f. In addition to any other penalty all cigarettes and tobacco products in the possession of a minor are hereby declared to be a common nuisance and contraband subject to confiscation.

SECTION 2. That the Code of the City of Emporia, Kansas, 1983, is hereby amended by adding a section to be numbered Section 16-99.1;

**Section 16-99.1.**

- a. When a person is stopped by a law enforcement officer for a cigarette or tobacco infraction, the person shall not be taken before the municipal judge unless the person demands and immediate appearance before a judge.
- b. When a person is stopped by a law enforcement officer for a cigarette or tobacco infraction, the law enforcement officer may prepare and deliver to the person a written cigarette or tobacco citation on a form approved by the secretary of revenue or the secretary's designee. The citation shall contain a notice to appear in court, the name and address of the person, the offense or offenses charged, the time and place when and where the person shall appear in court, the signature of the law enforcement officer and any other pertinent information. The time specified in the notice to appear shall be at least five days after the

alleged infraction unless the person charged with the infraction demands an earlier hearing. The place specified in the notice to appear shall be before the municipal judge of the City.

- c. The notice to appear shall provide a place where the person may make a written entry of appearance, waive the right to a trial and plead guilty or no contest. The notice to appear shall provide a space where the law enforcement officer shall enter the fine specified in subsection 3(c) of Section 16-99 and amendments thereto and court costs in the amount provided by law.
- d. If the notice to appear does not do so, the law enforcement officer shall provide a person charged with a cigarette or tobacco infraction a form explaining the person's right to appear and right to a trial and the person's right to pay the appropriate fine and court costs prior to the appearance date. The law enforcement officer shall provide the person with the address of the court to which the written entry of appearance, waiver of trial, plea of guilty or no contest and payment of fine and court costs shall be mailed.
- e. Prior to the time specified in the notice to appear, a person charged with a cigarette or tobacco infraction may enter a written appearance, waive right to trial, plead guilty or no contest and pay the \$25 fine and court costs provided by law. Payment may be made by mail or in person and may be by personal check. The cigarette or tobacco citation shall not have been compiled with if a check is not honored for any reason, or if the fine and court costs are not paid in full. When a person charged with a cigarette or tobacco infraction makes a payment without executing a written waiver of right to trial and plea of guilty or no contest, the payment shall be deemed such as appearance, waiver of right to trial and plea of no contest.

SECTION 3. That Section 16-99 of the Code of the City of Emporia, Kansas, 1983 as said section existed prior to the adoption of this ordinance is hereby repealed.

SECTION 4. This ordinance shall be effective upon publication in the official City newspaper.

SECTION 5. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, Kansas, 1983, as an addition or amendment thereto and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 7<sup>th</sup> day of August, 1996.